

SYNOPSIS OF THE MAY 3, 2018 DEPOSITION OF ROY DIMARIA

The following is a brief synopsis of the facts to which Roy DiMaria testified at his deposition. COR Clearing, LLC (“COR”) is offering excerpts from DiMaria’s deposition, attached hereto, as substantive evidence pursuant to the Court’s Individual Rules and Practice, Rule 5.C.ii.

DiMaria is a Director of Business Development at COR, and he held that position at all relevant times. P. 7:21-8:12; 35:18-20. In that role, he solicits broker-dealers to become new clients of COR. P. 36:19-23. As discussed below, DiMaria testified about, *inter alia*, COR’s projected profitability in connection with the Fully Disclosed Clearing Agreement and Schedule A between First Standard Financial Co., LLC (“First Standard”) and COR (the “FDCA”), and First Standard’s breach of the FDCA.

John McCormack, of First Standard, provided DiMaria with a document that COR refers to as a Firm Profile Form. P. 47:9-20. DiMaria prepared an economic analysis (the “Economic Analysis”) of FDCA, which projects the profitability of the FDCA to COR. P. 107:13-109:21. COR’s Credit Committee was also presented with the Economic Analysis. P. 109:22-111:3. Michael Scaplen, of COR, also reviewed the Economic Analysis. P. 107:13-109:21. COR and First Standard engaged in the conversion process. P. 83:3-14.

DiMaria received a call from McCormack on which he explained that First Standard could not go through with the transition to COR. P. 126:8-24, 169:16-24, 171:15-19. McCormack was afraid that First Standard would lose its brokers if it followed through with the transition, but McCormack did not identify the names of these brokers. *See id.*; *see also* P. 170:10-11. On February 13, 2017, DiMaria participated on the call between COR and First Standard, and to his recollection, the call included DiMaria, Scaplen, Carlos Salas, the CEO and a Member of the Board of Managers of COR, McCormack, and Carmine Berardi, the CEO of First Standard. P. 129:5-130:3. While he did not have a detailed recollection of the call, he did recall that Berardi said that First Standard did not want to go through with the FDCA and offered to provide COR with remuneration for the time that it had spent in connection with First Standard. P. 130:6-18. During the call, Berardi became angry and hung up the phone. *id.*

First Standard never mentioned to DiMaria that it was negotiating a new Fully Disclosed Clearing Agreement and Schedule A with Hilltop Securities, Inc. P. 193:14-25.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No.: 1:17-cv-02190(PAE)

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COR CLEARING, LLC,

Plaintiff,

v.

FIRST STANDARD FINANCIAL CO., LLC,

Defendant.

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DEPOSITION OF ROY DiMARIA
New York, New York
Thursday, May 3, 2018

Reported by:

Amy A. Rivera, CSR, RPR, CLR

JOB NO. 402963

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May 3, 2018

10:02 a.m.

Deposition of ROY DiMARIA held at the
office of SCARINCI HOLLENBECK, 3 Park Avenue, 15th
Floor, New York, New York, pursuant to Notice,
before Amy A. Rivera, Certified Shorthand Reporter,
Registered Professional Reporter, Certified LiveNote
Reporter, and a Notary Public of the States of New
York, New Jersey, and Delaware.

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2 A P P E A R A N C E S:

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16 BY: PAUL A. LIEBERMAN, ESQ.

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1 ROY DiMARIA

2 R O Y D I M A R I A, having been duly sworn,
3 testified as follows.

4 EXAMINATION

5 EXAMINATION

6 BY MR. LIEBERMAN:

7 Q. Good morning, Mr. DiMaria.

8 My name is Paul Lieberman. I'm a
9 partner in the securities and regulatory
10 litigation practice group at Scarinci Hollenbeck.
11 My firm represents First Standard in the defense
12 of this lawsuit initiated by COR. And we're going
13 to ask you today some questions and get your
14 answers.

15 Have you ever been deposed before in a
16 civil lawsuit?

17 A. I don't think so, no.

18 Q. Have you ever been deposed or had your
19 testimony taken in a FINRA or SEC regulatory
20 proceeding?

21 A. I think I have.

22 Q. When were those?

23 A. I can't recall.

24 Q. Within the past couple of years?

25 A. Oh, no, much longer.

1 ROY DiMARIA

2 I graduated with a teaching degree there. And
3 then I completed my bachelor in the States.

4 Q. And did you attend City University of
5 New York?

6 A. Yes, College of Staten Island.

7 Q. Do you have any licenses, you know, or
8 designations or other professional society?

9 A. I have FINRA license 7 and 63.

10 Q. In connection with your work at COR
11 and any prior clearing firm, have you had any
12 special training in clearing or securities
13 matters?

14 A. No.

15 Q. Do you complete -- take and complete
16 continuing education with respect to your
17 licensing?

18 A. Yes.

19 Q. Is that through COR?

20 A. Yes.

21 Q. And what is your current title at COR?

22 A. Director.

23 Q. You have a particular area of
24 specialty as a director?

25 A. Business development.

1 ROY DiMARIA

2 knew?

3 A. Steve Dripchak.

4 Q. How do you spell that?

5 A. D-R-I-P-C-H-A-K. Go with that.

6 Q. Okay. That's good.

7 Is he still there?

8 A. No.

9 Q. Did you know Mr. Scaplen at COR before
10 you joined?

11 A. No.

12 Q. And how long did it take between the
13 solicitation call, the interview process, and
14 employment offer being made?

15 A. I'm not sure, not -- not that long.

16 Q. Weeks and months?

17 A. Yeah.

18 Q. And since you joined COR in 2013, have
19 you remained in the same role and function?

20 A. Yes.

21 Q. Do you know if there's an org chart
22 within COR?

23 A. I'm not sure.

24 Q. Okay. Who do you currently report to?

25 A. Michael Scaplen.

1 ROY DiMARIA

2 Q. And how long have you been reporting
3 to Mr. Scaplen?

4 A. Since he started.

5 Q. Which was when, if you know?

6 A. I don't. Maybe four years ago.

7 Q. Okay. Do you and Mr. Scaplen work out
8 of the same office?

9 A. Yes.

10 Q. Do you have any individuals that
11 report to you?

12 A. No.

13 Q. Do you know who Mr. Scaplen reports
14 to?

15 A. Not sure.

16 Q. Do you know the difference between a
17 solid- and a dotted-line report?

18 A. No.

19 Q. Can you describe your function and
20 role at COR as the director of business
21 development?

22 A. My job was to bring new business to
23 COR.

24 Q. And you previously identified how you
25 did that when at Sterne Agee.

1 ROY DiMARIA

2 I'll do it.

3 MR. DEUTSCH: Objection.

4 Please do not comment on

5 Mr. Lieberman's assumptions.

6 MR. LIEBERMAN: Well, I will slim it
7 down.

8 BY MR. LIEBERMAN:

9 Q. With respect to the solicitation of
10 First Standard, do you recall whether at the time
11 that you sent the profile and questionnaire the
12 FDCA was sent with it?

13 A. I don't recall.

14 Q. Who did you send the profile
15 questionnaire to?

16 A. McCormack, possibly, yeah, I'm pretty
17 sure.

18 Q. Do you recall how you sent the profile
19 questionnaire to McCormack?

20 A. E-mail.

21 Q. And with that e-mail were there
22 instructions on what to do with it?

23 A. I usually write a line, complete it
24 and send it back.

25 Q. And before it is e-mailed was there

1 ROY DiMARIA

2 A. Typically.

3 Q. Okay. At what point in the process --
4 it sounds like there's a handoff, so you're no
5 longer involved and the conversion coordinators
6 take over.

7 When did that occur with respect to
8 First Standard, if you know?

9 A. They take over once the contracts are
10 signed and the firm's been approved.

11 Q. When you say, contract's been signed,
12 the contract's been signed by both COR and First
13 Standard?

14 A. Yeah.

15 Q. And not before that?

16 A. No.

17 Q. Do you recall when the contract, the
18 FDCA and Schedule A involving First Standard, was
19 signed by both parties?

20 A. I don't. I'm sorry. I do not.

21 Q. And so after the contract is signed by
22 both parties and either Todd or Josh take over as
23 the conversion coordinators, your role is over and
24 done?

25 A. Typically, yes.

1 ROY DiMARIA

2 requested?

3 A. Yeah, we request the FOCUS reports.

4 Q. Anything else besides the FOCUS
5 reports?

6 A. There's a whole list. Off the top of
7 my head, I remember FOCUS and U4s and -- I don't
8 know -- it's a copy of the BD, etc.

9 Q. Got it.

10 With respect to your role in the
11 conversion -- in soliciting clients to become
12 clients of -- I'm sorry. Let me rephrase it.

13 In connection with your role to
14 solicit prospects to become clients of COR, do you
15 have a discussion with Mr. Scaplen as to the
16 profitability of each potential clearing
17 relationship?

18 A. Yes.

19 Q. And when does that discussion about
20 profitability occur?

21 A. It's after we receive the profile
22 questionnaire that provides us with the data and
23 we can start analyzing the numbers.

24 Q. Are you involved in the number
25 analytics?

1 ROY DiMARIA

2 MR. DEUTSCH: Objection.

3 Q. In other words, you said we --

4 MR. LIEBERMAN: I'm sorry. Could you
5 read back his answer?

6 (Record read.)

7 Q. What do you mean when you say that we
8 can start analyzing the number? Who's the "we"?

9 A. Myself and my discussion with Michael
10 Scaplen.

11 Q. All right. And can you describe for
12 me the analytical discussions that you and
13 Mr. Scaplen have?

14 A. Part of the discussion is to look at
15 the information that is provided to us, then we
16 can start formulating potential fees that we're
17 going to charge and come up with a projected P&L.

18 Q. And in general, is there a number of
19 years that COR wants to have with a correspondent
20 by contract, a term of years?

21 A. There is. The preference would be for
22 the contract to be for five years at least.

23 Q. And is there some rationale for a
24 minimum of five years that you're aware of?

25 A. Well, it's just a commitment from both

1 ROY DiMARIA

2 sides.

3 Q. Do you recall your discussions with
4 Mr. Scaplen concerning the analytical numbers
5 concerning the First Standard profitability and,
6 therefore, the pricing schedule?

7 A. I don't specifically recall the
8 discussion.

9 Q. Are these discussions extensive
10 requiring, you know, hours and careful review of
11 the information provided?

12 A. No, they don't take that long.

13 Q. Is there some basic percentage of
14 profitability or number of profitability, BOGI, if
15 you will, that both you and Mr. Scaplen are
16 looking for?

17 A. Not really.

18 Q. Do you -- do you and/or Mr. Scaplen
19 have the discretion to set a profitability number
20 for each and every deal?

21 A. To a limited extent, I mean ...

22 Q. Who else is involved in making
23 decisions with respect to both the numbers that
24 you and Mr. Scaplen have identified -- and
25 analyzed, rather, and the price Schedule A?

1 ROY DiMARIA

2 A. Well, it's one of the things the
3 credit committee approves, so they're definitely
4 involved.

5 Q. Is there a particular person within
6 the credit committee?

7 A. No.

8 Q. There are enough integral people so
9 they can plug and play with whatever is necessary,
10 who is available, if you know?

11 MR. DEUTSCH: Objection.

12 A. I don't.

13 Q. Do you know what actual role the
14 committee plays?

15 I mean, are there discussions with you
16 and Mr. Scaplen in particular?

17 A. The committee has the power to approve
18 or not the relationship.

19 Q. Do you and Mr. -- and/or Mr. Scaplen
20 have to send up a memo in writing to the credit
21 committee outlining the proposal for an approval?

22 A. We typically send out some sort of an
23 e-mail reminder to everyone that we have received
24 all of the necessary documentation, everything is
25 up on SharePoint, and we ask people to review the

1 ROY DiMARIA

2 information in preparation for the credit
3 committee approval process.

4 Q. Do you and/or Mr. Scaplen attend the
5 committee meeting?

6 A. Yes.

7 Q. Do you recall approximately when you
8 sent the reminder notice for the credit committee
9 scheduling of the call -- of their meeting?

10 A. I don't.

11 Q. Do you recall that there was a credit
12 committee meeting concerning First Standard?

13 A. I'm sure.

14 Q. Do you recall participating?

15 A. Yes. I was there. I don't recall the
16 specifics, but I was definitely there.

17 Q. Are minutes taken of the meeting?

18 A. Yes.

19 Q. Who's the minute taker or the
20 secretary of the meeting?

21 A. I don't know.

22 Q. Are the minutes of the meeting
23 uploaded to SharePoint?

24 A. Not sure.

25 Q. Is the meeting in person or via

1 ROY DiMARIA

2 A F T E R N O O N S E S S I O N

3 (Time noted: 1:29 p.m.)

4 MR. LIEBERMAN: Let the record
5 reflect, while we were off, there were no
6 substantive discussions between the parties.

7 BY MR. LIEBERMAN:

8 Q. Mr. DiMaria, did you have any role or
9 involvement in February of 2017 in setting up a
10 conference call between Mr. Salas and Mr. Berardi
11 and Mr. McCormack?

12 A. Yes, Michael and I set up that call.

13 Q. Why -- how did that come to pass?

14 A. I think, if I recall, John called and
15 said that they had second thoughts, or they had
16 some issues about moving forward, and that they
17 couldn't go through with the conversion, that they
18 would lose a lot of the brokers or some of the
19 brokers, but it was a big portion of the business.

20 So, basically, there's not much I
21 could do, nor Michael. So the only thing we could
22 do, we just set up the call with Carlos, and -- so
23 that's -- we suggested that that's probably the
24 only thing we can do.

25 Q. Between the time Mr. McCormack called

1 ROY DiMARIA

2 or --

3 A. Not that I'm aware of.

4 Q. Okay. Thank you.

5 Did there come a point in time where
6 there was actually a call between Mr. Salas and
7 Mr. Berardi?

8 A. Yeah.

9 Q. Were you on that call?

10 A. Yes.

11 Q. Do you recall where -- where you were
12 in order to get on the call, physically located?

13 A. We were in the Edison office.

14 Q. And when you say, "we," that included
15 Michael Scaplen?

16 A. Mike.

17 Q. Anybody else there with you?

18 A. No, just the two of us.

19 Q. And was it a dial-in kind of
20 conference call situation?

21 A. Can't remember.

22 Q. And who else was on the call, if you
23 can remember?

24 A. Carlos and Mr. Berardi.

25 Q. John?

1 ROY DiMARIA

2 A. I'm assuming John. I don't know who
3 else.

4 Q. Mr. McComb on the call, if you recall?

5 A. I don't know for sure.

6 Q. Can you describe the call from
7 beginning to end, or is it too hard to recollect?

8 A. Well, I can tell you it was a short
9 call. It was not long. But -- and effectively,
10 it didn't go very well.

11 There was some discussion about
12 Berardi wanting to provide some remuneration for
13 time spent, but he didn't want to go through with
14 the contract.

15 And I'm not sure what Carlos answered
16 or how it went on, but Mr. Berardi was very upset
17 on the call and I remember him hanging up. It
18 wasn't a long call at all.

19 Q. Do you recall any profanities uttered
20 by Mr. Salas?

21 A. I don't think so.

22 Q. And after Mr. Berardi hung up the
23 phone were there conversations between yourself,
24 Mr. Salas, and Mr. Scaplen?

25 A. I don't -- I don't believe we had a

1 ROY DiMARIA

2 it's obvious that Michael was trying to set up a
3 call to understand what was going on.

4 Q. And on page 15320 at the bottom is the
5 e-mail from Mr. McCormack to both you and
6 Mr. Scaplen?

7 A. Yes.

8 Q. And do you see bullet points on the
9 e-mail?

10 A. I do.

11 Q. And is Mr. McCormack responding to
12 some of the problems that have been identified and
13 apparently raised already?

14 A. He's just making a list of things that
15 he heard.

16 Q. My question is: Prior to the e-mail
17 being sent had Jonathan and you spoken over the
18 phone about either these same problems that are
19 bulletized in the e-mail or some of them or more
20 of them that are identified?

21 A. The answer is the only thing I recall
22 was Jonathan mentioning that they were going to
23 lose a bunch of brokers and they couldn't go
24 through with the contract.

25 Q. Got it.

1 ROY DiMARIA

2 A. I don't remember any of the specific
3 bullets.

4 Q. Do you recall whether the losing a
5 number of brokers was related to the fixed income
6 relationships?

7 A. No.

8 Q. Did he mention a specific broker by
9 the name of Gus Zillo?

10 A. No, he did not. He mentioned several
11 brokers. He didn't give us the names.

12 Q. With respect to Mr. McCormack's bullet
13 about a poor reputation, do you have any idea what
14 he was talking about?

15 A. No.

16 Q. Was he talking about First Standard's
17 reputation or COR's reputation, if you know?

18 MR. DEUTSCH: Objection.

19 A. I don't know.

20 Q. What about poorly capitalized, was he
21 concerned about COR's capitalization?

22 You don't know?

23 A. I don't want to guess.

24 Q. Okay.

25 All right. So upon receiving this

1 ROY DiMARIA

2 response from Mr. McCormack, did you and
3 Mr. Scaplen have a conversation?

4 A. Well, we -- I don't recall the
5 specifics, but I'm sure we looked at the list and
6 probably didn't understand what was going on.

7 Q. Had you informed Mr. Scaplen about
8 Jonathan's advice to you about the potential loss
9 of a whole bunch of brokers if the conversion
10 continued?

11 MR. DEUTSCH: Objection.

12 Q. I think that's what you testified
13 before. I just wanted to confirm it.

14 MR. DEUTSCH: Objection.

15 A. I remember when we got the call, I
16 think I got the call, and I mentioned to Michael
17 that, you know, Jonathan was raising some problems
18 and they wanted to pull out of the contract, blah,
19 blah, blah.

20 Q. Okay. Had you ever had that situation
21 arise before during your tenure at COR, where
22 someone wants to pull out of a contract?

23 A. I don't -- not once the contract is
24 signed.

25 Q. Did you and Mr. Scaplen think that

1 ROY DiMARIA

2 shared hard drive?

3 A. That's all it is.

4 Q. Okay.

5 A. That's all it is.

6 Q. It's not a communication system?

7 A. No, absolutely not.

8 MR. LIEBERMAN: Objection. Leading.

9 MR. DEUTSCH: I'm trying to clear it
10 up for you.

11 THE WITNESS: I may have stated --

12 MR. LIEBERMAN: I don't need the
13 clearing of the record.

14 Q. You spoke with Mr. Lieberman about a
15 phone call that you received from Mr. McCormack in
16 which he relayed to you a question about -- he had
17 about broker complaints.

18 Did he at any point tell you anything
19 about his negotiations with Hilltop Securities for
20 a new clearing agreement or a new Schedule A?

21 A. No.

22 Q. Did you know that First Standard in
23 the period of January through February 2017 was
24 negotiating a new arrangement with Hilltop?

25 A. No.

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CERTIFICATE

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I, AMY A. RIVERA, a Certified Shorthand Reporter, Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public of the State of New York, do hereby certify that prior to the commencement of the examination ROY DiMARIA , was duly sworn by me to testify the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Notary Public of the State of New York

My commission expires December 6, 2021

License No. XI00939

Dated: May 14, 2018